

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**JAMES GREGORY ELLIOTT,**

**Petitioner,**

**v.**

**CIVIL ACTION NO. 2:06 CV 82  
CRIMINAL ACTION NO. 2:03 CR 15-1  
(Maxwell)**

**UNITED STATES OF AMERICA,**

**Respondent.**

**ORDER**

On August 16, 2006, *pro se* Petitioner James Gregory Elliott filed a Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody.

The case was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation in accordance with Rule 83.15 of the Local Rules of Prisoner Litigation Procedure.

On May 3, 2007, the Response Of The United States To Petitioner's Motion Under 28 U.S.C. § 2255 was filed, and, on July 3, 2007, a Response To State's Motion To Dismiss Petition For Writ Of Habeas Corpus was filed by the Petitioner.

On August 22, 2007, United States Magistrate Judge John S. Kaull issued an Opinion/Report And Recommendation wherein he recommended that the Petitioner's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody be denied and dismissed with prejudice.

In his Opinion/Report And Recommendation, Magistrate Judge Kaull provided the parties with ten (10) days from the date they were served with a copy of said Opinion/Report And Recommendation in which to file objections thereto and advised the

parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation. The Court's review of the docket in the above-styled action reveals that no objections to Magistrate Judge Kaull's August 22, 2007, Opinion/Report And Recommendation have been filed by either of the parties and that this matter is now ripe for review.

Upon consideration of said Opinion/Report and Recommendation, and having received no written objections thereto<sup>1</sup>, it is

**ORDERED** that the Opinion/Report And Recommendation entered by United States Magistrate Judge Kaull in the above-styled action on August 22, 2007 (Docket No. 242), be, and the same is hereby, **ACCEPTED** in totality. Consistent with said Opinion/Report And Recommendation, it is, accordingly,

**ORDERED** that the Petitioner's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (Docket No. 229) be, and the same is hereby, **DENIED** and **DISMISSED with prejudice**.

In light of the denial of the Petitioner's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody, it is further

**ORDERED** that the following Motions be, and the same are hereby, **DENIED as moot**:

1. Motion To Amend 28 U.S.C. § 2255 (Docket No. 244);

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<sup>1</sup>The failure of a party to objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4<sup>th</sup> Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

2. Motion In Forma Pauperis (Docket No. 247); and
3. Motion In Forma Pauperis (Docket No. 251).

It is further

**ORDERED** that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel of record for the Respondent.

**ENTER:** February 23, 2009

**/S/ Robert E. Maxwell**  
United States District Judge